IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 2269 of 2006(T)

PETITIONERS:

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1. **FINNY ZACHARIA, SECTION OFFICER, TAXES (F) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **GEORGE CHACKO, SELECTION GRADE ASSISTANT, GENERAL ADMINISTRATION (SERVICE H) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU
SRI.MURALI PURUSHOTHAMAN

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION (SERVICE A) DEPARTMENT GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **CONVENOR, DEPARTMENTAL PROMOTION COMMITTEE FOR APPOINTMENT TO THE CATEGORY OF SECTION OFFICERS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

3. **P. VIJAYAKUMARI, SELECTION GRADE ASSISTANT, HOUSING DEPARTMENT, GOVERNMENTAL SECRETARIAT, THIRUVANANTHAPURAM.**

...2/-

*ADDL.R4 & R5 ARE IMPLEADED:

R4. S.SREEVALSAN,
SELECTION GRADE ASSISTANT,
GENERAL ADMINISTRATION DEPARTMENT(P&ARD),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
RESIDING AT: SREERANGAM, ARASUMMOODU,
KULATHOOR P.O., THIRUVANANTHAPURAM.

(ADDL.R4 IS IMPLEADED AS PER ORDER DTD. 20/03/2007
IN I.A.NO.3999/2007)

R5. P.SHERLY,
SELECTION GRADE ASSISTANT,
GENERAL ADMINISTRATION DEPARTMENT (ACCOUNTS),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
RESIDING AT: VALIYAVILAYIL, TC 7/1006(1),
BHASI NAGAR, KOCHULLUR, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.

(ADDL.R5 IS IMPLEADED AS PER ORDER DTD. 20/03/2007
IN I.A.NO.4021/2007)

BY ADV. SMT.SREEDEVI KYLASANATH
SRI.T.P.DEYANANTHAN
SMT.S.PREETHA
BY GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE SELECT LIST PREPARED BY THE DPC DTD. 22/01/2005.

EXT.P2: COPY OF THE REPRESENTATION DTD. 1/07/2004 BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT.

EXT.P3: COPY OF THE MEMO NO.66489/SA1/04/GAD DTD. 11/03/2005 ISSUED BY THE 1ST RESPONDENT.

EXT.P4: COPY OF THE SUBMISSION DTD. 1/08/2005 BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.

EXT.P5: COPY OF THE JUDGMENT DTD. 7/10/2005 IN WP(C) NO.26497/2005 OF THIS HON'BLE COURT.

EXT.P6: COPY OF THE OFFICE ORDER NO.140/2005/GAD DTD. 27/12/2005 ISSUED BY THE 1ST RESPONDENT.

EXT.P7: COPY OF THE CIRCULAR NO.2778/SA1/01/GAD DTD. 3/05/2001 ISSUED BY THE 1ST RESPONDENT.

EXT.P8: COPY OF THE G.O.(RT) NO.4645/2002/GAD DTD. 18/07/2002.

EXT.P9: COPY OF NOTIFICATION NO.G.O.(P) NO.61/92/P&ARD DTD. 16/12/92.

EXT.P10: COPY OF THE ORDER NO.66489/SAL/04/GAD DTD. 30/07/2004 ISSUED BY THE 1ST RESPONDENT TO 3RD RESPONDENT.

EXT.P11: COPY OF THE REPRESENTATION FILED BY THE 3RD RESPONDENT DTD. 13/08/2004 TO THE 1ST RESPONDENT.

3RD RESPONDENT'S EXHIBITS:

EXT.R3(A): COPY OF OFFICE ORDER NO.56/03/GAD DTD. 26/06/2003 ISSUED BY THE 1ST RESPONDENT.

EXT.R3(B): COPY OF THE MEMO CALLING OBJECTIONS TO ANOTHER AFFECTED PERSON SRI.VIVEKANANDAN.

...2/-

4TH RESPONDENT'S EXHIBITS:

EXT.R4(A): COPY OF THE REPRESENTATION DTD. 28/10/2005 SUBMITTED BY THE APPLICATION BEFORE THE PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION DEPARTMENT.

EXT.R4(A): COPY OF THE REPRESENTATION DTD. 13/01/2007 SUBMITTED BY THE APPLICANT BEFORE THE SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION DEPARTMENT.

EXT.R4(B): COPY OF THE REPRESENTATION DTD.15/01/2007 SUBMITTED BY THE APPLICANT BEFORE THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT (GENERAL ADMINISTRATION DEPARTMENT).

EXT.R4(C): COPY OF THE REPRESENTATION DTD. 26/02/2007 SUBMITTED BY THE APPLICANT BEFORE THE CHIEF SECRETARY TO GOVERNMENT.

EXT.R4(D): COPY OF THE LETTER NO.2556/SA1/07/GAD DTD. 17/02/2007 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER TO THE APPLICANT.

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.2269 OF 2006-T

Judgment

The petitioners, who are presently working as Section Officer and Selection Grade Assistant respectively, in the Administrative Secretariat, Thiruvananthapuram,have approached this Court, challenging Ext.P3 memo issued by the Government and Ext.P6 consequential order, passed after considering the objections filed by the affected persons against Ext.P3. The third respondent is a member of the Scheduled Caste Community, who joined the Administrative Secretariat as Assistant Grade II on 12.05.1986. She was entitled to get exemption from passing the obligatory departmental tests. But, she did not claim or obtain the said benefit. In due course, she was promoted as Assistant Grade I, Senior Grade Assistant and Selection Grade Assistant on 31.01.1995, 20.01.1999 and 30.01.2004 respectively. She submitted Ext.P2 representation on 01.07.2004, claiming exemption from passing the obligatory tests for promotion and also to refix her promotion to various cadres accordingly. The Government entertained the said petition and issued Ext.P3 notice, calling for objections from affected persons against the provisional decision taken by the Government to allow her representation. The first petitioner submitted Ext.P4 representation dated 01.08.2005. The second petitioner asserts that no notice was served on him. In the meantime, feeling aggrieved by the delay in disposing of Ext.P2, the third respondent approached this Court and this Court, by Ext.P5 Judgment, directed the Government to pass final orders within a time frame. Pursuant to the said direction, Ext.P6 order was

passed by the Government on 27.12.2005, granting notional promotion to the third respondent as Assistant Grade I with effect from 30.08.1991, as Senior Grade Assistant with effect from 18.01.1996 and as Selection Grade Assistant with effect from 29.09.2001. Based on the said revision of seniority, during the pendency of the Writ Petition, she has been promoted as Section Officer on 23.03.2006. The petitioners submit that they are entitled to sit back. The third respondent slept over her rights and now, after the lapse of several years, she cannot be allowed to agitate her claim. The second petitioner was not served with any notice. If he was served with a notice, he would have raised the contention of sit back and resisted the provisional decision. So, the petitioners pray for quashing Exts.P3 and P6.

2. The 1st respondent has filed a counter affidavit, supporting the impugned orders. The third respondent has also filed a counter affidavit, supporting the decisions in her favour. The petitioners have filed a reply affidavit, dealing with the averments in the counter affidavits filed by respondents 1 and 3.

3. I heard the learned counsel on both sides. It is not in dispute that the third respondent was eligible for exemption and had she claimed the same in time, she would have got promotion as was granted to her under the impugned proceedings. In other words, the petitioners are attacking the impugned orders, only on technical grounds. It is a well settled position in law that the employees are entitled to sit back over the rights granted to them in due course and the same cannot be disturbed after long years. But, I think, the

same is not an absolute rule. If appropriate explanation forthcomes from the affected party and the same is found satisfactory or the reason for the delay is apparent from the facts of the case, the belated approach claiming the rights, can be entertained. The point to be decided is whether this Court should interfere with the benefits granted to the third respondent on the technical grounds raised by the petitioners. The third respondent belongs to Scheduled Caste community, the members of which were sidelined and marginalised for centuries and they are suffering various disabilities and therefore, special protection was granted to them by the framers of the Constitution and the framers of the Rules, governing service conditions. Because of the backwardness, they have failed to perceive the rights available to them under the Rules. Even though, there was delay in claiming her rights by the petitioner, the appointing authority decided to grant the same. I think, it is not proper for this Court to interfere with the same. May be, the petitioners have a case on technical grounds. But, I feel that when the Government have acted to extend justice to a member of the Scheduled Caste community and restored the rights she has lost because of her ignorance to assert the same in time, I think, this Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India, to unsettle the same. In the result, the Writ Petition fails and it is dismissed.

25.05.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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